

HOUSE BILL No. 1433

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-1.1-11; IC 6-1.1-15.

Synopsis: Property tax exemption procedure. For purposes of review, determination, and appeal of property tax exemption applications: (1) eliminates the role of the property tax assessment board of appeals; and (2) substitutes in that role the fiscal body of the municipality in which the property is subject to assessment, or the county fiscal body if the property is not subject to assessment in a municipality.

Effective: January 1, 2010.

Saunders, Stemler

January 13, 2009, read first time and referred to Committee on Government and Regulatory Reform.

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Introduced

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

HOUSE BILL No. 1433

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 6-1.1-11-0.5 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JANUARY 1, 2010]: **Sec. 0.5. As used in this chapter,**
4 **"appropriate fiscal body" refers to:**

5 (1) **if tangible property is subject to assessment in a**
6 **municipality, the fiscal body of the municipality; or**

7 (2) **if tangible property is not subject to assessment in a**
8 **municipality, the fiscal body of the county;**

9 **in which the tangible property is subject to assessment under this**
10 **article.**

11 SECTION 2. IC 6-1.1-11-1 IS AMENDED TO READ AS
12 FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 1. An exemption
13 is a privilege which may be waived by a person who owns tangible
14 property that would qualify for the exemption. If the owner does not
15 comply with the statutory procedures for obtaining an exemption, ~~he~~
16 **the owner** waives the exemption. If the exemption is waived, the
17 property is subject to taxation.

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SECTION 3. IC 6-1.1-11-3.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 3.5. (a) A not-for-profit corporation that seeks an exemption provided by IC 6-1.1-10 for 2000 or for a year that follows 2000 by a multiple of two (2) years must file an application for the exemption in that year. However, if a not-for-profit corporation seeks an exemption provided by IC 6-1.1-10 for a year not specified in this subsection and the corporation did not receive the exemption for the preceding year, the corporation must file an application for the exemption in the year for which the exemption is sought. The not-for-profit corporation must file each exemption application in the manner (other than the requirement for filing annually) prescribed in section 3 of this chapter.

(b) A not-for-profit corporation that receives an exemption provided under IC 6-1.1-10 for a particular year that remains eligible for the exemption for the following year is ~~only~~ required to file a statement to apply for the exemption **only** in the years specified in subsection (a), if the use of the not-for-profit corporation's property remains unchanged.

(c) A not-for-profit corporation that receives an exemption provided under IC 6-1.1-10 for a particular year which becomes ineligible for the exemption for the following year shall notify the assessor of the county in which the tangible property for which it claims the exemption is located of its ineligibility on or before May 15 of the year for which it becomes ineligible. If a not-for-profit corporation that is receiving an exemption provided under IC 6-1.1-10 changes the use of its tangible property so that part or all of that property no longer qualifies for the exemption, the not-for-profit corporation shall notify the assessor of the county in which the tangible property for which it claims the exemption is located of its ineligibility on or before May 15 of the year for which it first becomes ineligible. The county assessor shall immediately notify the county auditor of the not-for-profit corporation's ineligibility or disqualification for the exemption. A not-for-profit corporation that fails to provide the notification required by this subsection is subject to the penalties set forth in IC 6-1.1-37-9.

(d) For each year that is not a year specified in subsection (a), the auditor of each county shall apply an exemption provided under IC 6-1.1-10 to the tangible property owned by a not-for-profit corporation that received the exemption in the preceding year unless the ~~county property tax assessment board of appeals~~ **appropriate fiscal body** determines that the not-for-profit corporation is no longer eligible for the exemption.

(e) The department of local government finance may at any time

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review an exemption provided under this section and determine whether or not the not-for-profit corporation is eligible for the exemption.

SECTION 4. IC 6-1.1-11-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 5. (a) Before May 16 of each even-numbered year, the county auditor shall provide to the county assessor a list by taxing district of property for which a tax exemption was in effect for the immediately preceding year. Before July 1 of each even-numbered year, the county assessor shall return the list to the county auditor with a notation of any action of the ~~county property tax assessment board of appeals~~ **appropriate fiscal body** on that year's exemption of each listed property.

(b) The assessor of the county in which property is located shall, in each even-numbered year, mail a notice to the owner of the property if:

- (1) the owner has not applied for a tax exemption for that year;
- (2) a tax exemption for the property was in effect for the immediately preceding year; and
- (3) the owner is required to file an application for the exemption for that year under section 3.5 of this chapter.

(c) The notice required by subsection (b) must:

- (1) identify the property by key number, if any, and a street address, if any, or other common description of the property other than a legal description; and
- (2) state that the property will be placed on the county tax duplicate unless the owner applies for an exemption within fifteen (15) days after the date the notice is mailed.

The county assessor shall mail any notice required by subsection (b) before June 16 of the year in which the exemption application should have been filed.

(d) A county assessor's failure to give the notice required by subsection (b) does not continue an exemption unless an exemption application is filed by the owner and approved by the ~~county property tax assessment board of appeals~~ **appropriate fiscal body** on or before the first Monday in November of the year following the year in which the application should have been filed.

SECTION 5. IC 6-1.1-11-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 6. ~~Before the convening of the county property tax assessment board of appeals,~~ The county assessor shall, **upon receipt,** submit the exemption applications **under this chapter** to the ~~county property tax assessment board of appeals~~ **appropriate fiscal body** for examination.

SECTION 6. IC 6-1.1-11-7 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 7. (a) The ~~county property tax assessment board of appeals~~, **appropriate fiscal body**, after careful examination, shall approve or disapprove each exemption application and shall note its action on the application.

(b) If the ~~county property tax assessment board of appeals~~ **appropriate fiscal body** approves the exemption, in whole or part:

(1) the ~~county assessor~~ **fiscal body** shall notify the county auditor of the approval; and

(2) the county auditor shall note the ~~board's~~ **fiscal body's** action on the tax duplicate.

The county auditor's notation is notice to the county treasurer that the exempt property shall not be taxed for the current year unless otherwise ordered by the department of local government finance.

(c) If the exemption application is disapproved by the ~~county property tax assessment board of appeals~~, **appropriate fiscal body**, the county assessor shall notify the applicant by mail. Within thirty (30) days after the notice is mailed, the owner may, in the manner prescribed in IC 6-1.1-15-3, petition the Indiana board to review the ~~county property tax assessment board of appeals'~~ **appropriate fiscal body's** determination.

SECTION 7. IC 6-1.1-15-0.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: **Sec. 0.3. As used in this chapter, "appropriate fiscal body" has the meaning set forth in IC 6-1.1-11-0.5.**

SECTION 8. IC 6-1.1-15-3, AS AMENDED BY P.L.1-2008, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 3. (a) A taxpayer may obtain a review by the Indiana board of ~~a county board's action with respect to~~ the following:

(1) The assessment of that taxpayer's tangible property if the ~~county board's action requires the giving of notice to the taxpayer receives notice of an assessment determination by the county board.~~

(2) The exemption of that taxpayer's tangible property if the taxpayer receives a notice of an exemption determination by the ~~county board~~ **appropriate fiscal body** under IC 6-1.1-11-7.

(b) The county assessor is the party to the review under this section to defend ~~the an assessment~~ determination of the county board. **The appropriate fiscal body is the party to the review under this section to defend an exemption determination of the fiscal body.** At the time the notice of that determination is given to the taxpayer, the taxpayer shall also be informed in writing of:

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- (1) the taxpayer's opportunity for review under this section; and
 (2) the procedures the taxpayer must follow in order to obtain review under this section.

(c) A county assessor who:

- (1) dissents from the determination of an assessment ~~or an exemption~~ by the county board; **or**

- (2) **disagrees with the determination of an exemption by the appropriate fiscal body;**

may obtain a review of the assessment or the exemption by the Indiana board.

(d) In order to obtain a review by the Indiana board under this section, the party must, not later than forty-five (45) days after the date of the notice given to the party or parties of the determination of the county board **or appropriate fiscal body:**

- (1) file a petition for review with the Indiana board; and
 (2) mail a copy of the petition to the other party.

(e) The Indiana board shall prescribe:

- (1) the form of the petition for review of an assessment determination ~~or an exemption~~ by the county board; **and**

- (2) **the form of the petition for review of an exemption determination by the appropriate fiscal body.**

The Indiana board shall issue instructions for completion of the form. The form and the instructions must be clear, simple, and understandable to the average individual. A petition for review of such a determination must be made on the form prescribed by the Indiana board. The form must require the petitioner to specify the reasons why the petitioner believes that the assessment determination or the exemption determination ~~by the county board~~ is erroneous.

(f) If the action for which a taxpayer seeks review under this section is the assessment of tangible property, the taxpayer is not required to have an appraisal of the property in order to do the following:

- (1) Initiate the review.
 (2) Prosecute the review.

SECTION 9. IC 6-1.1-15-4, AS AMENDED BY P.L.219-2007, SECTION 40, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 4. (a) After receiving a petition for review which is filed under section 3 of this chapter, the Indiana board shall conduct a hearing at its earliest opportunity. The Indiana board may correct any errors that may have been made and adjust the assessment or exemption in accordance with the correction.

(b) If the Indiana board conducts a site inspection of the property as part of its review of the petition, the Indiana board shall give notice to

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all parties of the date and time of the site inspection. The Indiana board is not required to assess the property in question. The Indiana board shall give notice of the date fixed for ~~the~~ **a hearing concerning an assessment determination**, by mail, to the taxpayer and to the county assessor. **The Indiana board shall give notice of the date fixed for a hearing concerning an exemption determination, by mail, to the taxpayer, to the county assessor, and to the appropriate fiscal body.** The Indiana board shall give these notices at least thirty (30) days before the day fixed for the hearing unless the parties agree to a shorter period. With respect to a petition for review filed by a county assessor, the county board that made the determination under review under this section may file an amicus curiae brief in the review proceeding under this section. The expenses incurred by the county board in filing the amicus curiae brief shall be paid from the property reassessment fund under IC 6-1.1-4-27.5. The executive of a taxing unit may file an amicus curiae brief in the review proceeding under this section if the property whose assessment or exemption is under appeal is subject to assessment by that taxing unit.

(c) If a petition for review does not comply with the Indiana board's instructions for completing the form prescribed under section 3 of this chapter, the Indiana board shall return the petition to the petitioner and include a notice describing the defect in the petition. The petitioner then has thirty (30) days from the date on the notice to cure the defect and file a corrected petition. The Indiana board shall deny a corrected petition for review if it does not substantially comply with the Indiana board's instructions for completing the form prescribed under section 3 of this chapter.

(d) After the hearing, the Indiana board shall give the taxpayer, the county assessor, **the appropriate fiscal body in the case of an exemption determination**, and any entity that filed an amicus curiae brief:

- (1) notice, by mail, of its final determination; and
- (2) for parties entitled to appeal the final determination, notice of the procedures they must follow in order to obtain court review under section 5 of this chapter.

(e) Except as provided in subsection (f), the Indiana board shall conduct a hearing not later than nine (9) months after a petition in proper form is filed with the Indiana board, excluding any time due to a delay reasonably caused by the petitioner.

(f) With respect to an appeal of a real property assessment that takes effect on the assessment date on which a general reassessment of real property takes effect under IC 6-1.1-4-4, the Indiana board shall

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conduct a hearing not later than one (1) year after a petition in proper form is filed with the Indiana board, excluding any time due to a delay reasonably caused by the petitioner.

(g) Except as provided in subsection (h), the Indiana board shall make a determination not later than the later of:

(1) ninety (90) days after the hearing; or

(2) the date set in an extension order issued by the Indiana board.

(h) With respect to an appeal of a real property assessment that takes effect on the assessment date on which a general reassessment of real property takes effect under IC 6-1.1-4-4, the Indiana board shall make a determination not later than the later of:

(1) one hundred eighty (180) days after the hearing; or

(2) the date set in an extension order issued by the Indiana board.

(i) The Indiana board may not extend the final determination date under subsection (g) or (h) by more than one hundred eighty (180) days. If the Indiana board fails to make a final determination within the time allowed by this section, the entity that initiated the petition may:

(1) take no action and wait for the Indiana board to make a final determination; or

(2) petition for judicial review under section 5 of this chapter.

(j) A final determination must include separately stated findings of fact for all aspects of the determination. Findings of ultimate fact must be accompanied by a concise statement of the underlying basic facts of record to support the findings. Findings must be based exclusively upon the evidence on the record in the proceeding and on matters officially noticed in the proceeding. Findings must be based upon a preponderance of the evidence.

(k) The Indiana board may limit the scope of the appeal to the issues raised in the petition and the evaluation of the evidence presented to the county board **or an appropriate fiscal body** in support of those issues only if all parties participating in the hearing required under subsection (a) agree to the limitation. A party participating in the hearing required under subsection (a) is entitled to introduce evidence that is otherwise proper and admissible without regard to whether that evidence has previously been introduced at a hearing before the county board **or an appropriate fiscal body**.

(l) The Indiana board may require the parties to the appeal:

(1) to file not more than five (5) business days before the date of the hearing required under subsection (a) documentary evidence or summaries of statements of testimonial evidence; and

(2) to file not more than fifteen (15) business days before the date of the hearing required under subsection (a) lists of witnesses and

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exhibits to be introduced at the hearing.

(m) A party to a proceeding before the Indiana board shall provide to all other parties to the proceeding the information described in subsection (l) if the other party requests the information in writing at least ten (10) days before the deadline for filing of the information under subsection (l).

(n) The Indiana board may base its final determination on a stipulation between the respondent and the petitioner. If the final determination is based on a stipulated assessed valuation of tangible property, the Indiana board may order the placement of a notation on the permanent assessment record of the tangible property that the assessed valuation was determined by stipulation. The Indiana board may:

(1) order that a final determination under this subsection has no precedential value; or

(2) specify a limited precedential value of a final determination under this subsection.

SECTION 10. IC 6-1.1-15-5, AS AMENDED BY P.L.219-2007, SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 5. (a) Not later than fifteen (15) days after the Indiana board gives notice of its final determination under section 4 of this chapter to the party or the maximum allowable time for the issuance of a final determination by the Indiana board under section 4 of this chapter expires, a party to the proceeding may request a rehearing before the Indiana board. The Indiana board may conduct a rehearing and affirm or modify its final determination, giving the same notices after the rehearing as are required by section 4 of this chapter. The Indiana board has fifteen (15) days after receiving a petition for a rehearing to determine whether to grant a rehearing. Failure to grant a rehearing not later than fifteen (15) days after receiving the petition shall be treated as a final determination to deny the petition. A petition for a rehearing does not toll the time in which to file a petition for judicial review unless the petition for rehearing is granted. If the Indiana board determines to rehear a final determination, the Indiana board:

(1) may conduct the additional hearings that the Indiana board determines necessary or review the written record without additional hearings; and

(2) shall issue a final determination not later than ninety (90) days after notifying the parties that the Indiana board will rehear the final determination.

If the Indiana board fails to make a final determination within the time

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allowed under subdivision (2), the entity that initiated the petition for rehearing may take no action and wait for the Indiana board to make a final determination or petition for judicial review under subsection (g).

(b) A party may petition for judicial review of the final determination of the Indiana board regarding the assessment or exemption of tangible property. In order to obtain judicial review under this section, a party must:

(1) file a petition with the Indiana tax court;

(2) serve a copy of the petition on:

(A) the county assessor:

(i) in the case of an Indiana board determination with respect to an assessment determination; and

(ii) in the case of an Indiana board determination with respect to an exemption determination if the county assessor is a party to the Indiana board proceeding;

(B) the appropriate fiscal body in the case of an Indiana board determination with respect to an exemption determination;

~~(B)~~ (C) the attorney general; and

~~(C)~~ (D) any entity that filed an amicus curiae brief with the Indiana board; and

(3) file a written notice of appeal with the Indiana board informing the Indiana board of the party's intent to obtain judicial review.

Petitions for judicial review may be consolidated at the request of the appellants if it can be done in the interest of justice. The department of local government finance may intervene in an action taken under this subsection if the interpretation of a rule of the department is at issue in the action. The county assessor is a party to the review under this section **of an Indiana board determination with respect to an assessment determination. The appropriate fiscal body is a party to the review under this section of an Indiana board determination with respect to an exemption determination.**

(c) Except as provided in subsection (g), to initiate a proceeding for judicial review under this section, a party must take the action required by subsection (b) not later than:

(1) forty-five (45) days after the Indiana board gives the person notice of its final determination, unless a rehearing is conducted under subsection (a); or

(2) forty-five (45) days after the Indiana board gives the person notice under subsection (a) of its final determination, if a rehearing is conducted under subsection (a) or the maximum time

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1 elapses for the Indiana board to make a determination under this
2 section.

3 (d) The failure of the Indiana board to conduct a hearing within the
4 period prescribed in section 4(e) or 4(f) of this chapter does not
5 constitute notice to the party of an Indiana board final determination.

6 (e) The county assessor may petition for judicial review to the tax
7 court in the manner prescribed in this section of:

8 **(1) an Indiana board determination with respect to an**
9 **assessment determination; or**

10 **(2) an Indiana board determination with respect to an**
11 **exemption determination if the county assessor is a party to**
12 **the Indiana board proceeding.**

13 **The appropriate fiscal body may petition for judicial review to the**
14 **tax court in the manner prescribed in this section of an Indiana**
15 **board determination with respect to an exemption determination.**

16 (f) The county assessor may not be represented by the attorney
17 general in a judicial review initiated under subsection (b) by the county
18 assessor.

19 (g) If the maximum time elapses for the Indiana board to give notice
20 of its final determination under subsection (a) or section 4 of this
21 chapter, a party may initiate a proceeding for judicial review by taking
22 the action required by subsection (b) at any time after the maximum
23 time elapses. If:

24 (1) a judicial proceeding is initiated under this subsection; and

25 (2) the Indiana board has not issued a determination;

26 the tax court shall determine the matter de novo.

27 SECTION 11. IC 6-1.1-15-8, AS AMENDED BY P.L.219-2007,
28 SECTION 42, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
29 JANUARY 1, 2010]: Sec. 8. (a) If a final determination by the Indiana
30 board regarding the assessment or exemption of any tangible property
31 is vacated, set aside, or adjudged null and void under the decision of
32 the tax court, the matter of the assessment or exemption of the property
33 shall be remanded to the Indiana board with instructions to the Indiana
34 board to refer the matter to the:

35 (1) department of local government finance with respect to an
36 appeal of a determination made by the department; ~~or~~

37 (2) county board with respect to an appeal of ~~a~~ **an assessment**
38 **determination made by the county board; or**

39 **(3) appropriate fiscal body with respect to an appeal of an**
40 **exemption determination made by the fiscal body;**

41 to make another assessment or exemption determination. Upon remand,
42 the Indiana board may take action only on those issues specified in the

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1 decision of the tax court.

2 (b) The department of local government finance, ~~or the~~ county
3 board, **or appropriate fiscal body** shall take action on a case referred
4 to it by the Indiana board under subsection (a) not later than ninety (90)
5 days after the date the referral is made. The department of local
6 government finance, ~~or the~~ county board, **or appropriate fiscal body**
7 may petition the Indiana board at any time for an extension of the
8 ninety (90) day period. An extension shall be granted upon a showing
9 of reasonable cause.

10 (c) The taxpayer in a case remanded under subsection (a) may
11 petition the tax court for an order requiring the department of local
12 government finance, ~~or the~~ county board, **or appropriate fiscal body**
13 to show cause why action has not been taken pursuant to the Indiana
14 board's referral under subsection (a) if:

15 (1) at least ninety (90) days have elapsed since the referral was
16 made;

17 (2) the department of local government finance, ~~or the~~ county
18 board, **or appropriate fiscal body** has not taken action on the
19 issues specified in the tax court's decision; and

20 (3) an appeal of the tax court's decision has not been filed.

21 (d) If a case remanded under subsection (a) is appealed under
22 section 5 of this chapter, the ninety (90) day period provided in
23 subsection (b) is tolled until the appeal is concluded.

24 SECTION 12. IC 6-1.1-15-9, AS AMENDED BY P.L.146-2008,
25 SECTION 138, IS AMENDED TO READ AS FOLLOWS
26 [EFFECTIVE JANUARY 1, 2010]: Sec. 9. (a) If the assessment or
27 exemption of tangible property is corrected by the department of local
28 government finance, ~~or the~~ county board, **or appropriate fiscal body**
29 under section 8 of this chapter, the owner of the property has a right to
30 appeal the final determination of the corrected assessment or
31 exemption to the Indiana board. The county assessor also has a right to
32 appeal:

33 (1) the final determination of ~~the a~~ reassessment ~~or exemption~~ by
34 the department of local government finance or the county board,
35 but only upon:

36 (A) request by the ~~county assessor~~, the township assessor (if
37 any) or an affected taxing unit; **or**

38 (B) **the county assessor's own motion; or**

39 (2) **the final determination of an exemption by the appropriate**
40 **fiscal body, but only upon:**

41 (A) request by an affected taxing unit; **or**

42 (B) **the county assessor's own motion.**

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1 If the appeal is taken at the request of an affected taxing unit, the taxing
2 unit shall pay the costs of the appeal.

3 (b) An appeal under this section must be initiated in the manner
4 prescribed in section 3 of this chapter or IC 6-1.5-5.

5 SECTION 13. [EFFECTIVE JANUARY 1, 2010] **IC 6-1.1-11-0.5**
6 **and IC 6-1.1-15-0.3, both as added by this act, and IC 6-1.1-11-3.5,**
7 **IC 6-1.1-11-5, IC 6-1.1-11-6, IC 6-1.1-11-7, IC 6-1.1-15-3,**
8 **IC 6-1.1-15-4, IC 6-1.1-15-5, IC 6-1.1-15-8, and IC 6-1.1-15-9, all as**
9 **amended by this act, apply only to assessment dates after 2009.**

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